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OFFICE OF PETITIONS

In re Application of
Nisley et al.
Application No. 09/938,888
Patent No. 6,939,053
Filed: August 24, 2001
Attorney Docket No.
DODG:0045/YOD/EUB01RE151

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: DECISION GRANTING PETITION
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This decision is in response to Applicants' "APPLICATION FOR PATENT TERM ADJUSTMENT under (37 CFR 1.705(d))" filed on November 4, 2005 requesting that the Office adjust the PTA determination at the time of the mailing of the notice of issuance from a determination of 29 days to a determination of 730 or 850 days.

The application for PTA is **GRANTED**. The Office will adjust the PTA calculation at the time of the issuance of the patent to reflect a determination of 730 days. The Office will *sua sponte* issue a certificate of correction. The Office will further adjust the PAIR calculation to reflect this decision.

Applicants are given **thirty (30) days** to file a response to this decision. If applicants agree with this decision, then applicants need not further reply.

Applicants assert that the Office erred in the PTA calculation. The Office provided four hundred and ninety-seven (497) days of administrative delay for the failure to initially act upon the application within 14 months of the filing date of the application. See 37 CFR 1.702(a)(1). Applicants agree with this determination. However, applicants disagree with the failure to provide an additional three hundred and fifty-three (353) days for the failure to issue the application within four months of the payment of the issue fee under 37 CFR 1.702(a)(4). Applicants assert that the Office erred in entering the date of issue fee receipt in Office as 5/18/2005 rather than the correct date of 5/18/2004. Accordingly, the 353 days was not added to the Office delay. Applicants assert that the applicants did not submit drawings after notice of allowance.

Applicants further advise the Office that the Office erred in not entering the IDS submission of March 11, 2004 into PALM. Accordingly, the office did not reduce applicants PTA by one hundred and twenty (120) days for the submission. The Office thanks applicants for their good faith and candor in advising the office of the submission.

A review of the file reflects that applicants' arguments are persuasive. The record reflects that the Office failed to issue the action within four months of the payment of the issue fee pursuant

to 37 CFR 1.702(a)(4).¹ Accordingly, the Office errantly failed to grant applicants an additional 353 days of PTA. The Office reduction of 120 for drawings was also in error since such drawings were actually submitted on filing. However, the applicants admission of an IDS submission on 3/11/2004 amounts to a 120-day reduction under 37 CFR 1.704(c)(10). Applicants could have such IDS submission waived if applicant can make the required 1.704(d) statement. Overall, the correct amount of PTA at the time of the issuance of the patent is 730 days ($497 + 353 - (120) = 730$).

After the mailing of this decision, the Office will forward this patented file to the certificate of correction branch for an issuance of a certificate of correction after the expiration of the thirty day period.

The Office has assessed the \$200.00 fee. No additional fees are required in this deciding this application.

Any questions concerning this decision should be directed to Kery Fries, Senior Legal Advisor, Office of Patent Legal Administration, Office of Deputy Commissioner for Patent Examination Policy, at 571-272-7757.



Kery Fries
Senior Legal
Office of Patent Legal Administration
Office of Deputy Commissioner
For Patent Examination Policy

cc: adjusted Pair calculation
DRAFT Cert. Of Correction

¹The Office notes the issue fee was paid on May 18, 2004 and the patent issue on September 6 2005, a three hundred and fifty-three day delay.

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 6,939,053 B2
DATED : Sep. 6, 2005
INVENTOR(S) : Nisley et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (0) days

Delete the phrase "by 29 days" and insert – by 730 days--